

PERS 77-6722/2

22 DEC 1979

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MEMORANDUM FOR:   
Special Assistant to the General Counsel

FROM : Harry E. Fitzwater  
Director of Personnel

SUBJECT : Review of the SSCI Intelligence Charter Drafts  
of 6 November 1979

REFERENCES : (a) Multi adse memo fr OGC dtd 4 Dec 79, same subj  
(OGC 79-10881)

(b) Memo for the Record dtd 9 Nov 79, subj: OGC's  
Response to OP's Comments on Titles I & II of  
the Most Recent Draft of the Proposed National  
Intelligence Act of 1979

(c) Memo for OGC fr D/Pers dtd 30 Oct 79, subj:  
Review of the SSCI Revision of Titles I, II,  
& III and the Charters Working Group Revision  
of Title IV

1. We have reviewed the revised versions of the Intelligence Charter drafts and have no new issues to raise with your office. The Office of Personnel believes that references (b) and (c) along with earlier memoranda to you have generally documented our position on this legislation. Nevertheless, we wish to highlight the confusion which continues to exist in the Bill regarding the Inspector General and General Counsel. Although reference (b) indicated that an attempt would be made to resolve the matter, Title IV, Sub-section 413 still does not clarify whether an IG exists in the O/DNI when the Director of the Agency is not the DNI or the DDNI. We assume Section 413 provides for a Presidential appointed General Counsel in the Agency regardless of who is the Director, not only when the Agency Director and the DNI are the same.

2. In previous memoranda and most recently in reference (a), we have expressed our concern over the definition of "employee" and the unnecessary exclusion of contract employees from the meaning of this term. We continue to believe that this narrow definition is flawed since, in an apparent effort to formally deny consultants and other independent contractors government employee status, it needlessly excludes persons whose status clearly deserves such recognition.

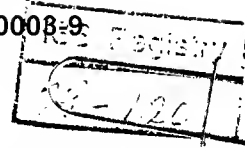
*Harry E. Fitzwater*

Harry E. Fitzwater

cc: C/ISS

OGC 79-10881

4 December 1979



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MEMORANDUM FOR:



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FROM:


Special Assistant to the General Counsel

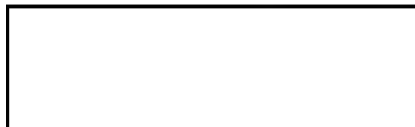
SUBJECT:

SSCI Intelligence Charter Drafts of  
6 November 1979

1. Attached for your information and review are the SSCI's revised drafts of Titles I - VII of intelligence charters dated 6 November 1979, a transmittal memorandum to the Charters Working Group, and my analysis of Title I. A similar analysis of Title II will be provided to you when completed.

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2.  of this Office and I have met with representatives of several components over the past two months in an effort to respond to questions and concerns about Titles I (National Intelligence), Title IV (CIA), and Title VI (NSA). We feel the issues are now well-known and defined. Nevertheless, I would appreciate your review of these latest drafts for any new issues or concerns from the perspective of your operations or interests.



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Attachments

9 November 1979

MEMORANDUM FOR THE RECORD

SUBJECT : Office of General Counsel's Response to the  
Office of Personnel's Comments on Titles  
I and II of the Most Recent Draft of the  
Proposed National Intelligence Act of 1979.

REFERENCE: Memo for OGC fr D/Pers dtd 30 Oct 79,  
Subj: Review of the SSCI Revision of Titles  
I, II, and III and the Charters Working Group  
Revision of Title IV.

On this date, 6 November 1979, the undersigned attended  
a conference held at the Office of General Counsel for the  
purpose of explaining their reaction to referenced memorandum.  
[redacted] and the undersigned were the  
only ones present.

TITLE I

Subsection 103(12), Definition of Intelligence Community - OP  
questioned the omission of the Intelligence Community Staff  
(ICS) from inclusion in the Intelligence Community as defined  
in the proposed legislation and queried the significance of  
the omission with respect to the future status of ICS. [redacted]  
and [redacted] differed in their views as to the current and future  
status of the ICS. [redacted] feels that it will cease to exist upon  
enactment of the legislation in question. [redacted] stated that  
the ICS has always been a part of the Agency and will continue  
as part of the Agency except that, to the extent that the D/CIA  
has community functions as DNI, as is possible and probable  
under the legislation in question, the ICS will be part of the  
O/DNI. In view of the foregoing, they did not believe that  
the ICS should be mentioned in the Act as a separate part of  
the intelligence community. Its status, however, may be am-  
plified in the legislative history accompanying the Act.

Subsection 103(21)(C) and (D), Definition of United States  
Person - OP objected to the definition of United States person  
extended to include unincorporated associations and corporations  
incorporated in the United States which are "not openly ack-  
nowledged by a foreign government or governments to be directed

25X1 and controlled by such foreign government or governments." Both [ ] agreed with OP's comment; but [ ] 25X1 said that the Senate staffers working on the Act insist upon the open acknowledgement condition making it almost impossible to exclude unincorporated associations and corporations incorporated in the United States from the protection accorded 25X1 United States persons. [ ] pointed out that this does not preclude the targetting of unincorporated associations or corporations incorporated in the United States; it merely requires the procedures to be followed for targetting a United 25X1 States person. [ ] added that, even though this places a greater burden on the intelligence community, the Senate is unlikely to back down on the issue because of political pressures. He said that they might, however, make a concession by setting forth certain criteria whereby some corporations incorporated in the United States might be defined as "foreign powers." 25X1 [ ] said that it is not clear yet how they will do this; but he will follow the matter and keep OP informed.

Subsection 202(b)(2), Definition of Covert Technique - OP found troublesome and unclear the proposed Act's definition of the term "covert technique". [ ] agreed with OP that 25X1 a technique is a technique and stands or falls as such. The Senate staffers, however, insist on designating some as "covert" in order to restrict their use. In any event, [ ] will 25X1 attempt to have the wording of the Subsection changed and rewritten for clarity.

#### TITLE IV

25X1 Subsection 413(a), General Counsel - OP identified a conflict between the Subsections of Title I and Title IV establishing the Office of General Counsel. The conflict with Subsection 117(c) of Title I had escaped OGC until OP pointed it out. [ ] said that they were grateful to OP for observing it and they will attempt to get the matter resolved.

Subsection 413(c), Inspector General - OP identified a problem in the statement of the responsibilities and authorities of the Inspector General. [ ] acknowledged the 25X1 problem that this Subsection presents and again they thanked OP for pointing it out. They propose to get the matter resolved.

Subsection 421(g), Security Officers - OP questioned the vagueness of the language granting Agency guards "the same powers as sheriffs and constables". [ ] said that he understood OP's apprehension with respect to the vagueness of the 25X1 language used here; but he pointed out that the language parallels that in the existing authorities on the powers of the General Services Administration's Federal Protective Service and was used here in order to give the Agency's guards the same powers. He cited 40 USC 318 et seq. for the language on

the Federal Protective Service. When asked by the undersigned why "Federal Protective Service" couldn't be substituted for "sheriffs and constables", [ ] said that they didn't want the Agency locked into the Protective Service system because that system is expected to be changed and the powers enlarged, creating another police force. They propose to have the specific powers of the Agency's guards enumerated in the legislative history.

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Subsection 431(a), Travel and Other Allowances - OP expressed reservations concerning the proposed Act's definition of employee. In order to meet OP's objections to this Subsection, it has been amended to read as follows: "As used in this Section, 'employee' means an employee as defined in 5 USC 2105, but does not include, unless otherwise specifically provided in accordance with regulations issued by the Director of the Agency, any person working for the Agency under a contract or any person who, when initially employed, is a resident in or a citizen of the foreign country in which such person is to be assigned to duty". [ ] claims that this gives OP the flexibility to determine by regulations which contract employees should get the benefits in question. The regulations, approved by the Director of the Agency, could authorize inclusion of the benefits in contracts covering certain individuals.

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Subsection 431(b), Death Gratuities - OP commented that the proposed death gratuities for Agency personnel were less than those provided for Foreign Service personnel [ ]

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[ ] reiterated OMB's intransigence on this question. They were, nevertheless urged to have our position brought before the Congress who might agree with OP's views.

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Subsection 421(i)(1) and (2), Directors Separation and Termination Powers - While OP did not comment on these Subsections in the referenced memorandum, [ ] volunteered OGC's position on them because OP had previously commented on earlier versions. The two Subsections provide a separation authority and a termination authority to replace the Directors current authority as set forth in 50 USC 403(c). [ ] explained that OGC's position is that, under the law as it is now, the Director has only one authority for all separations and terminations: 50 USC 403(c). The proposed Subsections add authority for routine separations normally incident to the hiring authority and continues the Director's extraordinary authority in cases involving national security.

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After the foregoing discussions, both [ ] complimented OP by stating that OGC greatly appreciates and thanks OP for its cooperation in commenting on proposed legislation. They said OP has made a valuable contribution in pointing out defects that escaped everyone else, including

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OGC and OLC. They added that even OP's comments on non-personnel matters were more germane than the comments offered by various components such as the DDO which had a greater interest. They said that OGC hopes OP will continue its high level cooperation. The undersigned thanked them for their compliment and assured them of future cooperation.



OP/P&PS

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cc: D/Pers

30 OCT 1979

25X1 MEMORANDUM FOR:

[Redacted]

Assistant General Counsel

FROM : Harry E. Fitzwater  
Director of Personnel

SUBJECT : Review of the SSCI Revision of Titles I, II, and  
III and the Charters Working Group Revision of  
Title IV

REFERENCES : a. OGC memo 79-08891 dtd 1 Oct 79, subj: Revised  
Draft of Title IV  
b. OGC memo 79-08894 dtd 28 Sep 79, subj: SSCI  
Revision of Titles I and II and Title III  
Draft  
c. Memo for OGC fr D/Pers dtd 31 Aug 79, subj:  
Review of Title IV Draft  
d. Memo for OGC fr DD/Pers-P&C dtd 29 Jun 79,  
subj: Administration Draft of Intelligence  
Charters Legislation

Forwarded herewith as an attachment to this memorandum are the  
Office of Personnel's comments concerning the above described drafts  
of the proposed National Intelligence Act of 1979.

[Redacted]

Harry E. Fitzwater

Attachment

Distribution:

Orig & 1 - Adse  
2 - D/Pers  
1 - OP/P&PS

25X1 OP/P&C/P&PS/[Redacted] cmc (29 Oct 79)

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October 1979

OFFICE OF PERSONNEL COMMENTS

TITLE I

Section 103(12), page 4 (formerly Section 104(12))

Does the continued omission of the Intelligence Community Staff (ICS) from inclusion in the intelligence community as defined in this subsection mean that this component becomes part of the O/DNI under one of the five Assistant Directors of National Intelligence provided for in Subsection 117(a)?

Subsection 103(21)(c), page 7 (formerly Subsection 104(23)(c))

This subsection, as revised, now defines the term "United States person" to include "an unincorporated association . . . which is not openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments". As a consequence, an association, controlled by a foreign government which does not openly acknowledge its control, qualifies as a United States person. We preferred the previous version which referred to "any unincorporated association . . . which is not controlled or directed by a foreign power". Proof of control by United States authorities rather than open acknowledgement by a foreign government would be the determinant in disqualifying an association from the protected status of a "United States person". Despite our partiality for the former version, we, nevertheless, wish to reiterate our previously expressed overall preference for the more encompassing definition contained in E.O. 12036, Section 4-214. Also, unless amplified in the legislative history, we feel that the terms "controlled" and "directed" should be defined in another subsection.

Subsection 103(21)(D), page 7 (formerly Subsection 104(23)(D))

This section, as revised, adopts the same open acknowledgement test described above, but applies it to corporations incorporated in the United States. In this context, especially, it would be well to define "controlled" and "directed". Would majority stock ownership by a nationalized foreign corporation constitute control within the meaning of this section? Would a U.S. corporation be considered under the direction of a foreign power if a majority of the board of directors was appointed by a nationalized foreign parent corporation? We feel that this should be clarified.

Subsection 202(b)(2), page 1

The definition of the term "covert technique" is troublesome to us. To begin with, it is not clear. It can be read to mean that the intrusion rather than the technique is designated by the President.

Unless this is explained in the legislative history, we recommend that the subsection be rewritten for clarity. We are also troubled, however, by the term itself. A technique is a technique, and stands or falls as such. It may be overtly applied or covertly applied; but we question the validity of its description as covert when we really mean its application is to be covert.

#### Title IV

##### Subsection 413(a), page 6

This subsection is in conflict with Subsection 117(c) of Title I which allows the General Counsel to serve both O/DNI and the Agency only when the Director of Central Intelligence is either the DNI or the DDNI. Subsection 412(a) allows an ADNI to become Director of Central Intelligence as well as the DNI or the DDNI. If the intent is that there be one General Counsel, Subsection 117(c) should be amended.

##### Subsection 413(c), page 7

We question whether an Inspector General of the CIA, appointed by a Director of the Agency who is not also Director of National Intelligence should have "responsibility and authority to investigate all activities . . . of the O/DNI".

##### Subsection 421(g), page 16

As noted in our 31 August 1979 comment on this subsection, the powers of sheriffs and constables vary from jurisdiction to jurisdiction. Is it the intent of this subsection to authorize powers to Agency security officers within the limitations of the jurisdictions where they function?

##### Subsection 431(a), page 29

We continue to have a problem with this negative definition of "employee" which, among other things, excludes "any person working for the Agency under a contract". Is the intent of the subsection to exclude "contract employees" who by law, as well as definition, are employees for the terms of their contracts; or is the intent merely to exclude consultants and other independent contractors? Is the subsection meant to circumvent the definition of employee set forth in 5 U.S.C. 2105 and other pertinent legislation? Must the Director of the Agency issue regulations to confer benefits on "contract employees" despite the inclusion of such benefits in their contracts of employment? We would prefer to see these matters clarified by an amendment to the subsection.

Subsection 431(b)(3), page 29

We understand that the law conferring death gratuities on Foreign Service personnel is to be changed to conform to the limitations cited here. Unless this is done, this subsection would continue to provide lesser benefits to CIA employees [REDACTED]

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